COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(1)Appeal from Order No. 32 of 2003

Smt. Rehana & others …… **Appellants.**

Versus

United India Insurance Co. Ltd.
and another. …… **Respondents.**

And

(2)Appeal from Order No. 33 of 2003

Smt. Muntha & others …… **Appellants.**

Versus

United India Insurance Co. Ltd.
and another. …… **Respondents.**

Mr. Rajendra Singh, Advocate, learned counsel for the appellants.
Mr. Prabhat Pande, Advocate, learned counsel for respondents no. 1.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Both the two appeals arise out of the same motor accident and common points are involved for consideration in the appeals, therefore, both the appeals are being disposed of by this common judgment.

These appeals have been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 04-12-2002, passed in M.A.C. Case No. 47 of 1999, Smt. Rehana and others Vs. Sri Dinesh Swaroop and another, and M.A.C. Case No. 49 of 1999, Smt. Muntha & others Vs. Dinesh Swaroop & another by the Motor Accident Claims Tribunal/Addl. District Judge, I F.T.C. Hardwar ***(hereinafter***

referred to as the Tribunal), whereby the learned Tribunal has awarded a sum of Rs. 2,10,000/- along with interest @ 9% per annum in favour of the claimants-appellants, as against the Opposite Party No. 2-respondent no.1 in former case and in the latter, the Tribunal has awarded compensation for the sum of Rs. 2,70,000/- as mentioned in the impugned order in favour of the claimant-respondents as against the Insurance Company. Aggrieved, the claimant-appellants of both the claim petitions have come up in appeal with a prayer of modifying the impugned judgment and award and to enhance the award on the basis of proved income of the deceased.

Brief facts of the case are that the claimant-appellants have filed claim petition No. 47 of 1999 under Section 166 of the Act before the Tribunal for the death of Mohammad Sagir ***(the deceased)*** and claim petition no. 49 of 1999 for the death of Mohammad Akhlak (the deceased) in a motor accident on 26-12-1998 with the allegation that the deceased were going from Dehradun to Bhagwanpur by Maruti Car No. U.G.Y.-4620. deceased Mohammad Sagir was driving the Maruti Car. In the way, truck No. URM-8662 driven rashly and negligently hit the car with result the deceased died on the spot. The deceased persons Mohd. Sagir and Mohd. Akhalak were engaged in the Dairy business and agriculture. Mohammad Sagir was aged 48 years and was earning Rs. 5,000/- per month, while Mohd. Akhalak was aged 40 years and was earning Rs. 15,000/- per month. The Truck was insured with the O.P. No.2-appellant, hence the claim petition.

The Opposite Party No.2-Insurance Company alone contested the claim petition by filing its written statement on different grounds. The learned Tribunal framed as many as four Issues in the case. The learned Tribunal has found on Issue No.1 that the accident in question resulting into grievous injuries and consequent death of the deceased persons has occurred due to rash and negligent driving by the truck driver. On Issue No.2 the

Tribunal found that the copy of driving licence of the truck driver was given to the Insurance Company, but no objection was raised by the Insurance Company, therefore, it was held that the truck driver was holding a valid driving licence. The driving licence of the deceased was placed on the record as paper no. 29-C. On Issue No.3, the Tribunal came to the conclusion that the claim petition is not defective for non-joinder of the necessary parties. On Issue No. 4, in the former case (M.A.C. No. 47 of 1999) the Tribunal has considered the documentary evidence filed to show the income of the deceased, but the Tribunal has declined to accepted the income of the deceased shown on the basis of income tax returns, rather it has been held that the minimum income of the deceased could be taken to be Rs. 24,000/- per annum. After deducting 1/3rd of the same, the Tribunal has taken Rs. 16,000/- for determining the total loss of income. The deceased was aged 48 years, therefore, as per provision of Section 163-A of the Act, multiplier of 13 has been applied. The Tribunal has also awarded sum of Rs. 2,000/- towards funeral expenses. Ultimately, compensation Rs. 2,10,000/- has been awarded along with interest as mentioned in the impugned order. In the latter the (M.A.C. Case No. 49 of 1999), the Tribunal has declined to accept the income of the deceased Mohd. Akhalak on the basis of the income tax returns and ultimately, held that the deceased was earning Rs. 27,000/- per annum. The Tribunal after deducting 1/3rd from the same, assessed loss of dependency at Rs. 18,000/- per annum. Finding the deceased in the age group of 40-45 years, the Tribunal has applied multiplier of 15. Ultimately, the Tribunal has awarded compensation of Rs. 2,70,000/-, as mentioned in the impugned order dated 4.12.2002, which gave rise to the present appeals.

We have heard learned counsel for the appellants as well as learned counsel for the Insurance Company and have perused the entire material on record including the impugned judgment and award.

The only point pressed before us by the learned counsel for the appellants in these appeals is that the income of the deceased was proved on record and the claimants have filed income tax returns for consecutive different years before the Tribunal, but the finding of the learned Tribunal in not accepting the said income is perverse and is liable to be set aside. We have been referred to Income Tax Returns furnished by the deceased for the years 1994-95, 1996-97 and 1997-98 in the former appeal in respect of death of Mohammad Sagir and in respect of death of Mohd. Akhalak our attention has been drawn to the income tax papers filed before the learned Tribunal. We have examined the entire record of both the cases on this point. We take up the case of deceased Mohammad Sagir first. We find that the deceased was earning Rs. 42,000/-, Rs. 43,000/- and 39,000/- respectively during the said years. In our opinion, the average income of the deceased on the basis of these documents can be safely taken for determination of just compensation in the present case. The finding of the Tribunal observing that the deceased could not be deemed to have been getting the said amount in future is not tenable, especially when no reasons have been given therefor. To work out just amount of compensation in the present case average of the aforesaid income, i.e. 42,000/- + 43,000/- + 39,000/- divided by 3 = Rs.41,333/- can be assessed as annual income of the deceased. Out of this amount, 1/3rd (i.e. Rs. 13,777.66, say Rs. 13,778/-) can be deducted towards personal expenses of the deceased. Thus, annual loss of dependency comes to Rs. 41,333/- (-) 13,778 = 27,555/- which can be rounded to Rs. 27,550/- per annum. The deceased was in the age group of 45-50 years, therefore, multiplier of 13 was properly applied by the Tribunal. By applying multiplier of 13, we find the total loss of dependency 13 x 27,550/- = 3,58,150/-. This amount can be rounded up at Rs. 3,58,000/-. To this extent the finding of the learned Tribunal is liable to be modified. The Tribunal has already awarded sum of Rs.2,000/-. Thus, in our opinion, the claimants are entitled to total compensation of Rs. ***3,60,000/-*** instead of Rs.

2,10,000/- held by the Tribunal. Rest of the findings of the learned Tribunal regarding interest, etc. shall remain undisturbed.

Coming to the case of death of deceased Mohammad Akhalak in A.O. No. 33 of 2003, we find that the Tribunal has taken similar view and instead of placing reliance on the Income Tax assessment papers, the Tribunal has assessed the annual income of the deceased at Rs. 27,000/- from dairy and agriculture work. In this case too, we are unable to agree with the view taken by the Tribunal. In this case, the claimants have filed Income Tax Assessment for two years only, i.e. 1997-98 and 1998-99 showing the income of the deceased respectively Rs. 55,000/- and Rs. 54,000/-. However, to find out average, income for at least three years would have been shown, therefore, in this case it will meet the ends of justice if we determine the income of the deceased at Rs. 54,000/- per annum, thereby after deducting 1/3rd, loss of dependency comes to Rs. 36,000/- per annum. The deceased come in the age group of 40-45 years, therefore, multiplier of 15 shall be applied to arrive at just compensation. Thus, the total loss of dependency can be determined as ***15 x 36,000/-*** = Rs.***5,40,000/-.*** In our opinion, this amount of Rs. 5,40,000/- will be just compensation for the death of the deceased Mohammad Akhalak. Accordingly, the claimants are allowed compensation of Rs. ***5,40,000/-*** instead of Rs. ***2,70,000/-***, as held by the learned Tribunal. Rest of the findings of the learned Tribunal shall remain undisturbed. To the above extent, the impugned order shall stand modified.

In the result, both the appeals succeed.

The appeals are allowed. The impugned judgment and order, dated 4-12-2002 under both the appeals stands modified as mentioned above. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned for being paid to the claimant-appellant in each case.

28-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP